

ESTTA Tracking number: **ESTTA632498**Filing date: **10/13/2014**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**Petition for Cancellation**

Notice is hereby given that the following party requests to cancel indicated registration.

Petitioner Information

Name	Luxco, Inc.		
Entity	Corporation	Citizenship	Missouri
Address	1000 Clark Avenue St. Louis, MO 63102 UNITED STATES		

Attorney information	Michael R. Annis Husch Blackwell LLP 190 Carondelet Plaza, Suite 600 St. Louis, MO 63105 UNITED STATES mike.annis@huschblackwell.com, alan.nemes@huschblackwell.com, andy.gilfoil@huschblackwell.com Phone:314-480-1500
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Registration Subject to Cancellation

Registration No	4609989	Registration date	09/23/2014
Registrant	OPICI I.P. HOLDINGS, LLC 25 DEBOER DRIVE GLEN ROCK, NJ 07452 UNITED STATES		

Goods/Services Subject to Cancellation


Class 033. First Use: 2014/06/30 First Use In Commerce: 2014/06/30
All goods and services in the class are cancelled, namely: Distilled Spirits; Rum

Grounds for Cancellation

Priority and likelihood of confusion	Trademark Act section 2(d)
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Marks Cited by Petitioner as Basis for Cancellation

U.S. Registration No.	727786	Application Date	04/11/1961
Registration Date	02/20/1962	Foreign Priority Date	NONE
Word Mark	REBEL YELL		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 033. First use: First Use: 1937/08/00 First Use In Commerce: 1937/08/00		

	Straight Bourbon Whiskey		
U.S. Registration No.	3632812	Application Date	05/05/2008
Registration Date	06/02/2009	Foreign Priority Date	NONE
Word Mark	REBEL RESERVE		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 033. First use: First Use: 2008/09/29 First Use In Commerce: 2008/09/29 liquors and distilled spirits		
Attachments	77465392#TMSN.png(bytes) REBELLION RUM cancellation.PDF(180464 bytes)		

Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/s/ Michael R. Annis
Name	Michael R. Annis
Date	10/13/2014

CERTIFICATE OF MAILING VIA ELECTRONIC TRANSMISSION

I hereby certify that this correspondence is being filed with the United States Patent and Trademark Office via the Electronic System for Trademark Trials and Appeals on October 13th, 2014.

/s/ Andrew Gilfoil

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Mark: REBELLION RUM
U.S. Application Serial No. 85/094,077
U.S. Registration No. 4,609,989

LUXCO, INC.,)	
)	
Petitioner,)	
)	
v.)	Cancellation No. _____
)	
OPICI I.P. HOLDINGS, LLC,)	U.S. Reg. No. 4,609,989
)	
Registrant.)	

PETITION TO CANCEL
U.S. REGISTRATION NO. 4,609,989

Luxco, Inc. ("Luxco" or "Petitioner"), a corporation organized and existing under the laws of the State of Missouri, having its principal place of business at Luxco, Inc., 1000 Clark Street, St. Louis, Missouri, believes it will be damaged by the continued registration of the mark REBELLION RUM claimed in U.S. Registration No. 4,609,989.

As grounds for its cancellation, it is alleged that:

1. Registrant Opici I.P. Holdings, LLC ("Registrant"), or its predecessor in interest, in U.S. Application Serial No. 85/094,077 (the "'077 Application"), applied for registration of the trademark REBELLION RUM on July 27, 2010, for "Distilled spirits; Rum" in International Class 33 under Section 1(b) of the Lanham Act (the "REBELLION RUM Mark"). The '077

Application was published for opposition in the Official Gazette on May 24, 2011 and was ultimately approved for registration on July 19, 2011. Registrant filed five requests for extension of time to file a Statement of Use, to wit; on January 2, 2012, July 17, 2012, December 19, 2012, July 19, 2013 and January 14, 2014. On July 16, 2014, Registrant submitted a Statement of Use declaring that the REBELLION RUM mark was first used in commerce on June 30, 2014. The '077 Application matured to U.S. Registration No. 4,609,989 (the "'989 Registration") on September 23, 2014.

2. Luxco is the owner of the mark REBEL YELL in connection with straight bourbon whiskey and the mark REBEL RESERVE in connection with liquors and distilled spirits. Luxco is also the owner of the below-noted United States Trademark registrations with the identified dates of first use in commerce:

MARKS	U.S. REG./SER. NO.	GOODS DESCRIPTION	DATE FIRST USED IN COMMERCE
REBEL YELL	Reg. No. 727,786	Straight Bourbon Whiskey	August 1, 1937
REBEL RESERVE	Reg. No. 3,632,812	Liquors and Distilled Spirits	September 29, 2008

3. In addition, Luxco also owns certain common law rights in the REBEL YELL and REBEL RESERVE trademarks.

4. Luxco's aforementioned common law rights and the above-noted registrations are collectively referred to herein as the "REBEL Marks."

5. Luxco's REBEL Marks are inherently distinctive and uniquely associated with Luxco in connection with Luxco's goods offered under the REBEL Marks by reason of the continuous use and promotion by Luxco and/or its predecessors-in-interest.

6. Luxco or its predecessors-in-interest have used the mark REBEL YELL in connection with straight bourbon whiskey since as early as August 1, 1937, long before Registrant's filing of the '077 Application.

7. Similarly, Luxco has used the mark REBEL RESERVE in connection with liquors and distilled spirits since at least as early as September 29, 2008, long before Registrant filed the '077 Application.

8. Luxco, its licensees and its predecessors-in-interest have promoted, caused to be promoted, and are now promoting and causing to be promoted the REBEL Marks in interstate commerce within the United States for identifying these goods.

9. Through this use and promotion, Luxco has established valuable goodwill in the REBEL Marks, and the relevant public has come to recognize the REBEL Marks as an indication of the products that emanate from Luxco.

10. Luxco has spent substantial sums of money to widely and extensively advertise and promote the goods it sells and offers for sale under the REBEL Marks.

11. Notwithstanding Luxco's prior rights in the REBEL Marks, on July 27, 2010, Registrant filed the '077 Application in the United States Patent and Trademark Office for registration of the mark REBELLION RUM for "Distilled spirits; Rum" in International Class 33.

12. On information and belief, Registrant knew of Luxco's prior rights in the REBEL Marks when filing the '077 Application.

13. The registration for the REBELLION RUM Mark herein petitioned so resembles Luxco's REBEL Marks as to be likely, if used in conjunction with Registrant's goods, to cause confusion, mistake or deceive customers, and Registrant's Mark under the '989 Registration is

confusingly and deceptively similar to Luxco's REBEL Marks when used in connection with Registrant's goods.

14. Similarly, Registrant's goods are or will be targeted, offered, and sold to the same class of prospective buyers as those for Luxco's goods, and Registrant and Luxco's goods are so commercially related that Registrant's REBELLION RUM Mark under the '989 Registration and Luxco's REBEL Marks, when used in conjunction with their respective goods, are confusingly similar.

15. Registrant's suggested use of its REBELLION RUM mark under the '989 Registration so resembles Luxco's REBEL Marks that it is likely to cause confusion, mistake or deception of purchasers as to the source of Registrant's goods and will inevitably falsely suggest a trade connection between Luxco and Registrant.

16. Continued registration of the REBELLION RUM Mark will support and assist Registrant in confusing and misleading use and will cause Luxco to lose control over the good and valuable reputation derived from its REBEL Marks, causing irreparable harm and injury to Luxco.

17. Upon information and belief, Registrant lacked the requisite *bona fide* intent to use the REBELLION RUM Mark in U.S. commerce on the specified goods when it filed its intent-to-use application for the mark on July 27, 2010.

WHEREFORE, Opposer Luxco, Inc. prays that U.S. Registration No. 4,609,989 be cancelled and further that this Petition be sustained in favor of Luxco.

DATED: October 13, 2014.

Respectfully Submitted,

By: /Michael Annis/
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CERTIFICATE OF SERVICE

The undersigned counsel hereby certifies that a copy of the foregoing PETITION TO CANCEL was served by First Class Mail, postage prepaid on this 13th day of October, 2014, upon:

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and

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Glen Rock, New Jersey 07452

/Andrew Gilfoil/